



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 248**

**IN THE MATTER OF CORNELIUS J. FOLEY, JR.**

## **DISPOSITION AGREEMENT**

This disposition agreement ("agreement") is entered into between the State Ethics Commission ("Commission") and Cornelius J. Foley, Jr. ("Mr. Foley") pursuant to section 11 of the Commission's Enforcement Procedure. This agreement constitutes a consented to final order of the Commission enforceable in superior court under G. L. c. 268B, s.4(d).

On February 4, 1983, the Commission initiated a preliminary inquiry into possible violations of G.L. c. 268A, s.5(e), by Mr. Foley, formerly employed as the principal administrative assistant to the Health Care Committee of the Massachusetts House of Representatives and subsequently (and currently) employed as Director of Government Affairs by the Massachusetts Medical Society ("MMS"). The Commission concluded that preliminary inquiry and, on December 13, 1983, found reasonable cause to believe that Mr. Foley had violated chapter 268A.

The parties now agree to the following findings of fact and conclusions of law:

1. Mr. Foley was principal administrative assistant to the House Health Care Committee from approximately 1979 until July 1981. As such, Mr. Foley was a state employee, as that term is defined in s.1(q) of G.L. c. 268A.
2. Before he left the legislature, Mr. Foley sought and received an advisory opinion from the Commission concerning any limitations imposed by chapter 268A on his activities on behalf of his prospective employer, the Massachusetts Medical Society ("MMS").
3. The Commission's opinion (EC-COI-81-80, dated June 30, 1981) advised Mr. Foley that s.5(e) of G.L. c. 268A prohibited him, for one year after leaving state service, from acting as a legislative agent as that term is defined in s.39 of Chapter 3 for anyone other than the Commonwealth before the governmental body with which he was then associated. The Commission's opinion concluded that Mr. Foley could not therefore act as a "lobbyist on behalf of MMS before either branch of the General Court" for the year after he left. The opinion referred Mr. Foley to an opinion by the attorney general for general guidance in the area of what activities on his part, on behalf of MMS, more specifically would constitute lobby.
4. Mr. Foley began work for MMS on July 13, 1981 as its Director of Government

Affairs. In this position, his responsibilities included identifying matters coming before the legislative and executive branches of state government that were of interest to the MMS membership, following the progress of those matters and reporting on their status to the appropriate MMS personnel and committees.

5. During the course of the year in which s.5(e) restricted his activities (July 13, 1981 - July 12, 1982), Mr. Foley obtained from MMS's principal legislative agent information about legislation, which Mr. Foley communicated to MMS. Mr. Foley also communicated MMS's positions on different pieces of legislation to MMS's principal legislative agent, who used this information in his own lobbying activities for MMS, including such activities before the General Court, between July 13, 1981 and July 12, 1982.

6. During the legislature's closing sessions in December 1981, Mr. Foley, according to his expense memorandum, "remained on the hill during the late night sessions because we (MMS) had several important pieces which we were following, and which could have gone either way if there was no one to answer late night inquiries or give other information concerning such issues if necessary."

7. Also during the course of his first year with MMS, Mr. Foley participated in discussions of MMS's strategy on particular pieces of legislation. He helped draft letters to legislators from MMS concerning MMS's stand on different bills. These letters went out under the signatures of MMS's president and the chairman of its committee on legislation.

8. In addition, Mr. Foley, during the July 13, 1981 - July 12, 1982 period, wrote to the president of the Massachusetts Radiological Society suggesting that the society send letters in support of MMS's opposition to a bill to particular legislators in addition to those to whom the radiologists had already written.

9. By the actions described above in paragraphs 5-8-- communicating information about legislation and MMS's positions to and from MMS and MMS's principal legislative agent, helping to formulate and articulate those positions, and soliciting and assisting the lobbying activities of others by participating in the drafting of letters to legislators and by advising others how most effectively to support MMS's positions Mr. Foley violated s.5(e) of chapter 268A.\* That section prohibited him from acting as a legislative agent on MMS's behalf before the General Court, and those actions constituted acting as a legislative agent.

10. The statutory definition of legislative agent contained in G.L. c. 3, s.39 includes "any person who for compensation or reward does any act to promote, oppose or influence legislation" (emphasis added). (Section 5(e) of chapter 268A cites this definition in identifying the activities to which it applies.) In addition, the preamble to the statute enacting G. L. c. 3 states that lobbying activities are reimbursed efforts to persuade legislators to take specific legislative action both by "direct communications" to members of the General Court and by "solicitation of others to engage in such efforts."

(This part of the preamble was quoted in the attorney general opinion referenced in the Commission's advisory opinion to Mr. Foley.)

In the Commission's view, this broad concept of lobbying promotes one of s.5(e)'s purposes: to prevent a former legislator or legislative staff member from using his special knowledge of or access to the General Court to promote private interests during his first year away from that body. The need to insulate the legislative process from the former employee's inevitable special knowledge and access during this initial period is the same whether the former employee is doing the lobbying directly or is instead advising and directing the lobbying activities of someone else.

11. For all these reasons, Mr. Foley should have known that his activities as described in paragraphs 5-8 herein violated s.5(e). At a minimum, Mr. Foley should have appreciated the risk that they did and asked for clarification.

Based on the foregoing, the Commission has determined that the public interest would be served by the disposition of this matter without further Commission enforcement proceedings on the basis of the following terms, to which Mr. Foley has agreed:

(a) that he pay to the Commission the sum of \$500.00 forthwith as a civil penalty for violating G.L. c. 268A, s.5(e), by acting as a legislative agent on behalf of his private employer on legislative matters within one year of leaving the staff of the legislature; and

(b) that he waive all rights to contest the Findings of fact, conclusions of law and terms contained in this agreement in this or any other related administrative or judicial proceeding in which the Commission is a party.

**DATE AUTHORIZED: January 20, 1984**

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\* During the course of its preliminary inquiry, the Commission found insufficient evidence for reasonable cause to believe that Mr. Foey had violated G.L. c. 268A, s.5(e) by directly lobbying legislators or their aides.